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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Human rights bodies and mechanisms

Good practices and challenges, including discrimination, in business and in access to financial services by indigenous peoples, in particular indigenous women and indigenous persons with disabilities

Study of the Expert Mechanism on the Rights of Indigenous Peoples

Summary

The Expert Mechanism on the Rights of Indigenous Peoples has carried out the present study pursuant to the request made by the Human Rights Council in its resolution 33/13. In the study, the Expert Mechanism proposes a human rights-based understanding of indigenous peoples' businesses and access to financial services and identifies encouraging practices and challenges in that area. Expert Mechanism advice No. 10 on indigenous peoples' businesses and access to financial services is contained in the annex.

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I. Introduction

1. In its resolution 33/13, the Human Rights Council requested the Expert Mechanism on the Rights of Indigenous Peoples to prepare a study on good practices and challenges, including discrimination, in business and in access to financial services by indigenous peoples, in particular indigenous women and indigenous persons with disabilities, and to present it to the Council at its thirty-sixth session.

2. The Expert Mechanism called for States, indigenous peoples, national human rights institutions and other stakeholders to provide information for the study. The submissions received have been made available on the Expert Mechanism website whenever permission to do so has been granted. The study also benefited from presentations made at the expert seminar on good practices and challenges for indigenous peoples' entrepreneurship, which was held in Boulder, United States of America, from 6 to 7 March 2017, and organized by the Office of the United Nations High Commissioner for Human Rights and the University of Colorado Law School.

II. A human rights-based understanding of indigenous peoples' businesses

A. Grounding indigenous peoples' business and access to financial services within a human rights framework

3. Indigenous peoples have their own economies, including traditional livelihoods and ways of producing, selling and distributing goods or services, as well as concepts of profit, saving and sustainable use of resources. Those economies have been affected by centuries of historical injustices, most notably dispossession of lands, territories and resources that, compounded by underlying prejudiced views of indigenous peoples' ways of life, livelihoods and knowledge systems, have undermined their business potential.

4. The systematic economic marginalization of indigenous peoples continues to the present day, including through the discrimination that they frequently face in accessing financial services or in establishing and operating their own businesses. Indigenous women, persons with disabilities and young indigenous persons are particularly affected by discrimination due to the multiple barriers that they face.

5. As restorative frameworks, the United Nations Declaration on the Rights of Indigenous Peoples and several other international human rights instruments guarantee rights that seek to redress the historical injustices suffered by indigenous peoples. Article 3 of the Declaration enshrines indigenous peoples' right to freely pursue their economic, social and cultural development as an integral part of their right to self-determination. Article 23 of the Declaration provides for indigenous peoples' right to development, including the right to determine and develop economic priorities, strategies and programmes. Those provisions underlie indigenous peoples' right to unlock their business potential, do business as an integral part of their right to self-determination, and develop or maintain sustainable economies in their own communities, while also participating in national and regional markets if they wish.

6. The Declaration underlines the particular relevance of indigenous peoples' access to financial services as a way to redress historical injustices and discrimination. In article 4 on self-determination, it clarifies that indigenous peoples require resources to achieve self-determined development. In addition, in article 39, it enshrines the right of indigenous peoples to financial and technical assistance, which should be culturally sensitive and not contribute to dependency relationships with the State, markets or financial institutions.

7. In addressing indigenous peoples' economic marginalization, articles 21 and 22 of the Declaration provide specifically for attention to be paid to the rights of indigenous women, youth and persons with disabilities. Many indigenous peoples suffer from policies of economic forced assimilation that have subjected them to discriminatory and precarious

working conditions. That has put particular pressure on indigenous youth, who often leave their communities to search for work in cities. Indigenous women face similar challenges when combining their unpaid domestic work and paid work in the labour market.

8. The International Labour Organization (ILO) Discrimination (Employment and Occupation) Convention, 1958 (No. 111) is a widely ratified international instrument, grounded in the human rights principle of equal economic opportunities. In interpreting the Convention, the ILO Committee of Experts on the Application of Conventions and Recommendations has reaffirmed the key contribution of indigenous peoples' traditional occupations to addressing their economic marginalization, underlining the importance of access to lands and resources for them to engage in their traditional occupations.[1] ILO has argued that "discrimination in the labour market, by excluding members of indigenous communities from work or by impairing their chances of developing market-relevant capabilities, lowers the quality of jobs they can aspire to".[2]

9. The international obligation to respect, protect and promote indigenous peoples' traditional economies is similarly enshrined in article 23 of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), which provides that "rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development".

10. The right to economic self-determination, including through control over natural resources, is also enshrined in article 1 of the 1986 United Nations Declaration on the Right to Development.

11. Indigenous peoples' right to their economic systems is an enabling right that facilitates the enjoyment and exercise of other rights. The former Special Rapporteur on the rights of indigenous peoples, James Anaya, concluded in his 2013 report on extractive industries and indigenous peoples that the enjoyment of self-determination and related rights may be enhanced when indigenous peoples freely choose to develop their own resource extraction enterprises backed by adequate capacity and internal governance institutions (see A/HRC/24/41, para. 11).

12. The United Nations "Protect, Respect and Remedy" Framework on business and human rights reaffirms that businesses can contribute to the realization of human rights, including the right of those who suffer the most discrimination. Businesses constitute powerful forces capable of generating economic growth, reducing poverty, and increasing demand for the rule of law, thereby contributing to the realization of a broad spectrum of human rights (see A/HRC/8/5, para. 2).

13. However, the Framework fails to pay particular attention to the negative impact that dispossession of land and natural resources has had on indigenous peoples' capacity to do business and become actors of inclusive growth. The Framework also fails to look into potential lessons that could be learned from indigenous peoples' traditional economic models that have enabled them over centuries to balance successfully economic, social, cultural and environmental objectives.

14. The Sustainable Development Goals also establish a link between business, human rights and discrimination-free living conditions for those left furthest behind, including indigenous peoples. Goal 10 on reduced inequalities in income should be broadly understood as including income generated by indigenous peoples from their traditional economies, which deserve equal protection, respect and promotion as sources of income. Goal 8 on sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all, is also of key relevance. Indigenous businesses have

[1] See the Committee's direct request to Cambodia. Available from www.ilo.ch/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3254923.

[2] ILO Leaflet No. 5 on discrimination in employment and occupation, p. 1. Available from http://pro169.org/res/materials/en/discrimination/Leaflet%20on%20Discrimination%20in%20employment%20&%20Occupation.pdf.

much to contribute to the goal of generating employment and ensuring sustainable livelihoods.[3]

15. The Convention on Biological Diversity also provides recognition of the links between indigenous traditional knowledge, sustainable customary use of biological resources and its wider potential benefits. According to article 8 (j), States shall respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities and promote their wider application with the approval and involvement of the holders of such knowledge, and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices. Traditional knowledge issues cut across many domains in relation to global environmental issues, including biodiversity conservation, natural resource management, business development, use of genetic resources and climate change.

16. The Paris Agreement acknowledges the role of indigenous peoples' traditional knowledge in addressing climate change (art. 7 (5)) and reminds States to respect, promote and consider their human rights obligations when taking action to address climate change (preamble). Indigenous peoples should therefore have a legitimate stake in climate change-related businesses, funding and financial services.

B. Indigenous peoples' rights-based approaches to business

17. Indigenous peoples' economic systems consist of a diversity of activities for self-determined development. Those activities have traditionally been mostly for subsistence and include small-scale agriculture, hunting, gathering, animal husbandry and artisanal activities such as weaving, carpentry, carving and blacksmithing.[4] The present section deconstructs indigenous peoples' economies and businesses with a view to understanding the human rights features that make them unique and contribute to their resilience.

1. Indigenous peoples' business as a safeguard for their right to live in dignity

18. Economic redress and empowerment of indigenous peoples and the corresponding right to undertake economic activities is not a goal in itself, but a means for indigenous peoples to attain their right to the dignity and diversity of their cultures, traditions, histories and aspirations, as guaranteed in the United Nations Declaration on the Rights of Indigenous Peoples (art. 15).

19. The right of indigenous peoples to maintain and develop their economic systems and institutions, including the right to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities is enshrined in the Declaration (art. 20), which further provides that indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress (art. 20).

20. The Declaration also requires States to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society (art. 15). That applies to prejudiced views that consider indigenous peoples' use, ownership and occupation of lands and resources as wasteful and economically unworthy.

21. Article 2 of the ILO Indigenous and Tribal Peoples Convention provides for indigenous peoples' economic empowerment as a means for restoring respect for their cultures, customs, traditions and institutions. To that end, States are required to take measures to "promote the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions ... assisting the members of the peoples concerned to eliminate socio-

[3] See the submission from the New Zealand Human Rights Commission.

[4] Jannie Lasimbang, "Indigenous peoples and local economic development", *Global Thinking for Local Development*, vol. 5 (2008). Available from http://pro169.org/res/materials/en/development/IPs%20and%20Local%20Economic%20Development.pdf.

economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life".

22. Generally, indigenous peoples' economic activities aim not only at generating resources but also strengthening indigenous cultures, rebuilding communities' self-esteem, breaking systemic barriers of discrimination, protecting their lands and natural resources, reclaiming their place in economic affairs and becoming key actors in their self-determined development.

23. Notwithstanding their considerable diversity, indigenous peoples' economies place a strong emphasis on both social and economic returns to communities. Indigenous peoples' ways of understanding business do not necessarily define success by the amount of profit made, but rather by the benefits that a business can provide to their families and communities.

24. That indigenous notion of corporate social responsibility appears to be grounded in human rights and seems different from the dominant corporate social responsibility model, which is guided by charity, free from binding norms and focused on corporate public image. Indigenous businesses or economic activities are commonly discussed as part of a broader governing strategy for the management of indigenous peoples' lands and natural resources and include the definition of internal agreements regarding the manner and the extent of development of economic activities to avoid severe impacts on the communal way of life.[5] As noted by former Expert Mechanism member Jannie Lasimbang, "any indigenous economic system is part of an economic and social totality that connects and governs the lives of its peoples. Social responsibility and reciprocity are embedded into behavioral norms within indigenous social systems".[6] The mainstream globalization-guided business model, which is often criticized for lacking social dimensions,[7] could learn from indigenous peoples' understanding of businesses grounded in community values and human rights principles.

2. Indigenous peoples' business as a safeguard for their right to lands, territories and resources

25. Indigenous peoples' activities, including those of an economic nature, constitute the core basis for their rights over lands and resources, which they hold not only for themselves but also for future generations. Immemorial use and occupation of lands, territories and resources constitute the primary means of proof of indigenous peoples' rights and claims over a given territory, as substantiated by several court decisions. Article 26 of the Declaration states that rights over lands derive from traditional use and occupation, including for economic purposes.

26. Regional human rights mechanisms have reaffirmed that indigenous peoples' economic activities on their lands and territories, including exploitation or conservation of resources thereon, are constitutive elements of their right to lands. For instance, the Inter-American Court of Human Rights concluded in the Saramaka case that:

> The right to use and enjoy their territory would be meaningless in the context of indigenous and tribal communities if said right were not connected to the natural resources that lie on and within the land…This connectedness between the territory and the natural resources necessary for their physical and cultural survival is precisely what needs to be protected (*Saramaka People v. Suriname*, para. 122).

27. The African Commission on Human and Peoples' Rights reached a similar conclusion, indicating that the Endorois indigenous people's right over their ancestral lands

[5] See for example, the following initiatives from Brazil: Plano de Gestão do Território Indígena do Xingu (2016), Governança e Bem Viver Indígena: Planos de Gestão Territorial e Ambiental das Terras Indígenas do Alto e Médio Rio Negro, and Plano de Gestão da Terra Indígena Mamoadate.

[6] Jannie Lasimbang, "Indigenous peoples and local economic development", p. 43.

[7] See John Ruggie, "Keynote address: United Nations Forum on Business and Human Rights" (14 November 2016). Available from www.ohchr.org/Documents/Issues/Business/ForumSession5/Statements/JohnRuggie.pdf.

and resources included their right to undertake economic activities with a view to generating revenues:

> The African Commission is of the view that Endorois culture, religion, and traditional way of life are intimately intertwined with their ancestral lands – Lake Bogoria and the surrounding area. It agrees that Lake Bogoria and the Monchongoi Forest are central to the Endorois' way of life and without access to their ancestral land, the Endorois are unable to fully exercise their cultural and religious rights, and feel disconnected from their land and ancestors (*Endorois Welfare Council v. Kenya*, para. 156).

28. The subsistence-focused economic model is still prevalent among many indigenous peoples' communities in Asia, Africa and parts of Latin America and even in developed countries. In parts of Europe, North America, Australia and New Zealand indigenous peoples' economic activities are expanding, as the former Special Rapporteur on the rights of indigenous peoples has said, with "indigenous nations or tribes [owning and operating] companies that engage in oil and gas production, manage electric power assets, or invest in alternative energy" (see A/HRC/24/41, para. 10).

29. Those examples point towards a correlation between the level of legal protection for indigenous peoples' rights over lands or resources and their respective choices of economic models. On the one hand, in countries where their rights over lands and resources are better protected, indigenous peoples tend to be able to develop their economic activities and businesses in a more autonomous manner and also to be more open to innovative business models or partnerships. Protection of indigenous land rights does not necessarily, or even usually, imply "privatization," which can lead to further loss of lands and resources. Rather indigenous lands and resources must be protected according to indigenous traditions and norms, and with domestic remedial mechanisms in cases of violations or abuses of their rights.

30. On the other hand, indigenous communities living in countries where their rights over lands or resources are not protected appear more resistant to innovative business models, which they fear might lead to further alienation of their lands and resources. Lack of legal protection for their lands and resources thus limits their business options.

3. Indigenous peoples' businesses as a means to achieve enhanced enjoyment of their rights to culture, languages and traditional knowledge

31. Article 27 of the International Covenant on Civil and Political Rights protects the right of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture. In its general comment No. 23 (1994) on the rights of minorities, the Human Rights Committee indicates that for indigenous peoples, the right to enjoy a particular culture may consist in a way of life which is closely associated with territory and use of its resources (para. 3.2).

32. Article 31 of the Declaration protects culture and traditional knowledge-related activities with economic potential, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts.

33. The Expert Mechanism's study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples reaffirms the link between culture, land rights and self-determination. The study underlines also the role of languages for indigenous peoples' economic activities grounded in traditional knowledge (see A/HRC/21/53, paras. 23 and 25).

34. Increasing recognition of the importance of indigenous-led entrepreneurship has seen a growing number of indigenous businesses established to enable indigenous peoples to reclaim their place and space in the business world and to promote indigenous modes of

production. For example, Symbiosis, a fashion company in Costa Rica, melds traditional art forms with innovative marketing to appeal to a global market.[8]

35. Culture underpins the social infrastructure of indigenous communities and it can help provide a foundation to support business growth if that is a collective decision. Culture can also provide a number of different business opportunities, particularly in the arts and tourism fields, such as music and dance, arts and craft and the traditional food industry, which can be leveraged to meet indigenous peoples' needs.

36. However, indigenous traditional knowledge systems are susceptible to being commodified and owned and traded as private intellectual property rights. Examples include the misappropriation of traditional knowledge-based genetic resources and products derived from biodiversity-rich ecosystems, for which indigenous peoples often receive little direct benefit. For example, the San people in South Africa contested the use of their traditional knowledge about the plant known as Hoodia, which they have used for centuries to block feelings of hunger, by pharmaceutical companies for medicine including against obesity.[9] As a positive example, the Plurinational State of Bolivia has established a registry of collective trademarks of indigenous communities' handicrafts and textiles.

37. While Western systems emphasize individual intellectual property, indigenous peoples' traditional knowledge is often created and owned collectively, passed down orally, and regulated by customary laws requiring stewardship for the benefit of the community and future generations. As the Expert Mechanism has previously underlined, existing international mechanisms do little to protect traditional indigenous intellectual property, because they focus on protecting the rights of individuals, not collectives (see A/HRC/30/53, para. 58). The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity addresses traditional knowledge associated with genetic resources and provides provisions for fair and equitable benefit-sharing. However, further strengthening protections around indigenous knowledge systems could help reduce the risk of cultural appropriation and ensure that any culturally based business opportunities benefit indigenous peoples.

4. Free, prior and informed consent as a catalyst of safe, viable and inclusive indigenous peoples' businesses

38. The Declaration guarantees a set of rights that should allow indigenous peoples to do business on their lands safely and viably. To that end, article 29 provides for the protection of the environment and productive capacity of indigenous peoples' lands, territories and resources. The article specifically prohibits the storage or disposal of hazardous materials on indigenous peoples' lands without their free, prior and informed consent. Article 32 underlines the particular role of free, prior and informed consent with regard to the development, utilization or exploitation of mineral, water and other resources on indigenous peoples' lands and territories.

39. The principle of free, prior and informed consent has been elaborated upon by numerous human rights experts and mechanisms, including the Expert Mechanism and the Special Rapporteur on the rights of indigenous peoples.[10] Even in cases where indigenous peoples themselves exploit the resources on their lands, free, prior and informed consent would still be of critical importance to ensure that all sections of communities, including indigenous women, youth and persons with disabilities, participate effectively. Free, prior and informed consent thus reinforces the inclusiveness of indigenous peoples' business models.

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[8] Alancay Morales, presentation to the expert seminar on good practices and challenges for indigenous peoples' entrepreneurship.

[9] More information on the case can be found at www.wipo.int/export/sites/www/academy/en/about/global_network/educational_materials/cs1_hoodia.pdf.

[10] See, for example, A/HRC/18/42, A/HRC/21/55 and A/HRC/24/41.

40. The human rights-based approach to business by indigenous peoples plays a double role. Upstream, indigenous peoples' businesses help to reclaim their rights and downstream, businesses serve as a tool for enhanced enjoyment of rights by indigenous peoples, including within their own communities by specific social groups, notably indigenous women, youth and person with disabilities.

C. Discrimination-free appreciation of the contribution indigenous peoples' businesses and economies make to national development

41. The Declaration is grounded in equality and seeks to address structural discrimination that affects indigenous peoples, including the non-recognition of their contribution to national economies or societies as a whole. To that end, the preamble to the Declaration reaffirms that all peoples contribute to the diversity and richness of civilizations and cultures, and recognizes that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development.

42. One key facet of the discrimination experienced by indigenous peoples is the stereotyped view that they represent an obstacle to development or that their economic activities do not contribute to the economies of the countries they live in. Indigenous peoples' economic models are often considered wasteful of resources, bound to disappear and "anti-development".

43. Those prejudiced views are grounded in conceptual frameworks that were and continue to be used to justify land dispossession and economic marginalization. They negate the human rights principles of equality and human dignity, which the Declaration upholds by affirming that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust (preamble).

44. Indigenous businesses and traditional livelihoods in fact play an increasingly important role in national economies. In Canada, indigenous businesses contribute approximately Can$ 12 billion to the economy annually.[11] In the United States, over a period of five years, indigenous businesses contributed over US$ 34.4 billion to the national economy.[12] In New Zealand, the Maori economy is worth an estimated $NZ 40 billion, representing 5.6 per cent of the country's gross domestic product (GDP).[13] In other countries, however, there is little data assessing the contribution of indigenous peoples to national economies. For instance, pictures of Maasai culture contribute enormously to the Kenyan national economy, considering the wide use of those images as national symbols, including for the Kenyan national airline and tourist industry. In that and other examples, the contribution of indigenous peoples to their national economies remains invisible, which fosters prejudiced views against indigenous peoples' industries, economies and cultures.

45. Globally, it has been estimated that pastoralism provides 10 per cent of the world's meat production.[14] In sub-Saharan Africa, pastoralism, which is often practised by indigenous peoples, accounts for a significant proportion of GDP. For example, pastoralism accounts for 84 per cent of the agricultural GDP in the Niger, 80 per cent of GDP in the Sudan and 50 per cent in Kenya. In Ethiopia, the pastoralist leather industry is the second highest performing industry in terms of foreign trade.[15] The 2010 African Union Policy Framework for Pastoralism in Africa: Securing, Protecting and Improving the Lives,

[11] See Bert Archer, "The first Indigenous business incubator is coming to Toronto" Novae (2 February 2017). Available from https://novae.ca/en/2017/02/the-first-indigenous-business-incubator-is-coming-to-toronto/.

[12] See United States Census Bureau Public Information Office, "Facts for Features: American Indian and Alaska Native Heritage Month: November 2012" (Washington D.C., 25 Oct. 2012).

[13] See Te Puni Kōkiri, Māori Economy Report 2013 (2015).

[14] See *State of the World's Indigenous Peoples* (United Nations publication, Sales No. 09.VI.13).

[15] Ibid.

Livelihoods and Rights of Pastoralist Communities is aimed at reinforcing the contribution of pastoral livestock to national, regional and continent-wide economies.

46. Indigenous economic models are becoming increasingly valued as they offer proven examples of sustainable development. Indigenous peoples' strong affiliation to the natural environment is one of the reasons for their survival and many indigenous peoples are adept at reading early warning signals of global warming and other indicators of environmental change. For the future of the planet, State policies and actions should recognize the important role that indigenous economies and business models play in promoting sustainable development practices.

III. Practices

47. Encouraging practices are emerging from various actors seeking to address discrimination against indigenous peoples' economic activities or businesses, including from indigenous peoples themselves.

A. States

48. States hold primary accountability for providing support to indigenous peoples' economic activities, as stated in article 21 of the Declaration, and are addressing the issue of discrimination against indigenous peoples' businesses or economic activities in different ways, some of which are outlined below.

1. Addressing discrimination against indigenous peoples' businesses through recognition and protection of rights over lands and resources

49. Land rights legislation that has supported indigenous peoples' economic development include the Maori Fisheries Act of 2004 in New Zealand and the Alaska Native Claims Settlement Act of 1971. They illustrate the complexity of enacting legislation to remedy the legacies of dispossession in the modern era. For example, while the latter "settled" vast indigenous land claims in Alaska through substantial monetary payments and title to certain lands, it has been criticized for imposing Western-style corporate models on traditional Alaska Native communities, paving the way for widespread natural resource development by outsiders, and failing to respect indigenous territorial jurisdiction, with mixed results including decades of litigation on indigenous rights to self-governance and other matters. To date, many Alaska Natives continue to suffer high rates of poverty, domestic violence, suicide and other social ills, with some of those problems compounded by the jurisdictional legacy of the Act. Yet, Alaska Native corporations are successful along various metrics. For example, NANA, one of 13 regional corporations created by the Act, has a business arm and subsidiaries that employ more than 15,000 people from around the world and in 2015 had an annual revenue of $1.6 billion.[16] NANA also emphasizes indigenous values, including cooperation, family, spirituality and hunting, known collectively as "Iñupiat Ilitquisat", in its activities.[17]

50. Another notable business initiative associated with legislative reform is Moana New Zealand, a Maori fisheries company, established following the Treaty of Waitangi settlements of Maori claims to marine resources. Those legislative settlements, dating back to 1989, also faced their share of criticism and litigation over the question of whether the Government had effectively consulted with Maori pursuant to indigenous governing norms. Yet, by 2007, Maori owned an estimated 40 per cent of the New Zealand seafood industry.[18] Those and other examples demonstrate the economic potential that flows from

[16] See www.nana.com/regional/about-us/nana-faq/.

[17] See http://nana.com/regional/about-us/mission/values/.

[18] See Melanie Durette, "Indigenous property rights in commercial fisheries: Canada, New Zealand and Australia compared", Centre for Aboriginal Economic Policy Research (CAEPR) Working Paper No. 42/2008 (Canberra, CAEPR, 2007). See also Erin McKenzie, "Aotearoa Fisheries rebrands to Moana New Zealand to deliver premium Kiwi seafood to the world", Idealog, 15 July 2016. Available from

recognition of indigenous peoples' rights to their lands and resources, the challenges of securing effective participation, consultation and consent in those measures, and the necessity of protecting indigenous cultural values and governing structures in contemporary business practices.[19] Joseph Kalt and Stephen Cornell call that the phenomenon of "cultural match" in indigenous economic development, noting that self-determination, effective institutions and internal legitimacy are threshold indicators for successful businesses in indigenous communities.[20]

51. The African Union's Policy Framework for Pastoralism in Africa highlights the fact that "pastoral development efforts must go beyond single-sector technical approaches, and embrace indigenous knowledge, innovations for sustainable natural resources management, effective governance, and further integration of pastoral livelihoods with expanding market opportunities".[21] The framework also highlights a number of good practices in Africa, including the recognition by the Government of the Central African Republic of the importance of pastoralists for the national economy, "with subsequent allocation to pastoralist communities of land and appropriate veterinary services".[22]

52. In Latin America, the recognition and demarcation of lands has advanced but requires further protection, including through the implementation of indigenous territorial governing plans. The duty of States to consult and seek consent over measures that impact indigenous peoples' lands and rights is also still a key challenge for land rights and human rights protection of indigenous peoples. In Brazil, after a national consultation process, a National Policy on Territorial and Environmental Management of Indigenous Lands was established in 2012 to provide practical measures to guarantee indigenous peoples full possession of their lands after demarcation.[23] To date, the main thrust of the implementation of the policy has been to encourage indigenous communities to draw up their own management plans for lands. Those plans are tools to better identify and reaffirm indigenous governing capacity, economic activities and traditional knowledge and cultural concerns in the use of their territories and natural resources, but are limited by budget cuts. However, if not combined with the advance of the land demarcations that still remain to be carried out, the policy cannot be considered complete.

2. Promoting indigenous peoples' businesses through positive discrimination measures

53. Some States use tax incentives to encourage business development by or with indigenous peoples. For example, individuals and businesses on many Native American territories are partially exempt from certain taxes. In many cases, the exemption arises from the recognition of indigenous nationhood or early treaty settlements. In that situation, indigenous governments are able to implement their own tax regime, including sales taxes, which can be applied to indigenous and some non-indigenous businesses on their land. That has allowed the development of a range of businesses that would not have otherwise taken place.[24] Similarly, the Canadian First Nations Fiscal and Statistical Management Act provides authority for First Nations to collect tax. By opting into the tax system under that Act, First Nations are in a better position to promote economic growth and capitalize on business relationships.[25] The Whitecap Dakota First Nation is a small community with

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http://idealog.co.nz/venture/2016/07/aotearoa-fisheries-rebrands-moana-new-zealand-deliver-premium-kiwi-seafood-world.

[19] Urbis, *Enabling Prosperity: success factors in Indigenous economic development* (Sydney, Westpac, 2014).

[20] See http://hpaied.org/publications/sovereignty-and-nation-building-development-challenge-indian-country-today or http://hpaied.org/about/overview.

[21] African Union, *Policy Framework for Pastoralism in Africa: Securing, Protecting and Improving the Lives, Livelihoods and Rights of Pastoralist Communities*, p. 3.

[22] Ibid., p. 15.

[23] GIZ, "Protection and Sustainable Management of Indigenous Areas in the Amazon" (2014). Available from www.giz.de/en/worldwide/12525.html/.

[24] Owen Stanley, "The potential use of tax incentives for Indigenous businesses on Indigenous land", CAEPR Working Paper No. 17/2002 (Canberra, CAEPR, 2002).

[25] Indigenous and Northern Affairs Canada, "First Nations Fiscal Management Act" (2017). Available from www.aadnc-aandc.gc.ca/eng/1393512745390/1393512934976.

limited access to capital. Under the Act, the community was able to start charging a goods and services tax on fuels, cigarettes and alcohol in order to finance its infrastructure and other needs.[70]

54. Exceptions from trade agreements to provide more favourable conditions to indigenous peoples is another way in which States are supporting indigenous peoples' businesses. A particular example is the Treaty of Waitangi exception, which ensures that the Government of New Zealand has the "flexibility to implement domestic policies that favour Māori without being obliged to offer equivalent treatment to overseas entities".[71] However, trade agreements in general continue to raise concerns about indigenous peoples' rights, as recently documented by the Special Rapporteur on the rights of indigenous peoples (see A/HRC/33/42).

55. States are also taking measures to facilitate access to credit and other financial services for indigenous peoples, who often face challenges in that regard due to discrimination, geographic isolation or other factors. For example, Australia has a statutory agency, Indigenous Business Australia, that provides grants and loans for indigenous business people who cannot access funding from mainstream banking services. Among other initiatives, the agency supported the development of a set of Indigenous Investment Principles, which provide guidance to indigenous Australians, organizations and communities to develop greater economic resilience and to be strong, active participants in the Australian economy.[72]

56. In Malaysia, agent banking enables consumers in remote areas to obtain banking services through licensed financial institutions operated by third-party agents, such as retail outlets or post offices. Since the introduction of the system in 2012, almost 8,000 agent banks have been established throughout the country.[73]

57. In Mexico, the Commission for the Development of Indigenous Peoples supports the development and improvement of productive processes through the Programme for the Improvement of Indigenous Production and Productivity. The goal is to contribute to the consolidation of productive and tourism projects for indigenous peoples, through their communities or businesses, in order to increase income and promote equality between men and women.[74]

58. Other initiatives to support indigenous business include cash transfers and economic incentives for indigenous activities. Some States are also creating a market for indigenous products through their purchasing power. A number of those types of initiatives to support indigenous peoples' entrepreneurship have been introduced in the Russian Federation. At the regional level, the initiatives include the 2001 law on traditional livelihoods of numerically small indigenous peoples in Khanty-Mansi Autonomous Area, which established state support mechanisms to pay subsidies to indigenous people engaged in traditional indigenous activities, such as reindeer husbandry, horse-breeding, hunting and fishing. Another law in Khanty-Mansi Autonomous Area provides support to organizations that are engaged in the preservation of traditional livelihoods and crafts. In order to be eligible for such support, the organization needs to employ indigenous peoples in its governing bodies, and half of its employees must be of indigenous origin. The organization also needs to derive 70 per cent of its income from traditional forms of economic activities.[75]

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[70] See Stelios Loizides and Wanda Wuttunee, *Creating Wealth and Employment in Aboriginal Communities* (Ottawa, Conference Board of Canada, 2005).

[71] New Zealand, "TPP and Māori Development" (2016), p. 3. Available from www.beehive.govt.nz/sites/all/files/TPP%20factsheet%20-%20TPP%20and%20Maori%2021%20Jan%202016.pdf.

[72] See the submission from Australia.

[73] See the statement made by Malaysia at the tenth session of the Expert Mechanism.

[74] See the submission from Mexico.

[75] Alexey Tsykarev and Natalya Novikova, presentations to the expert seminar on good practices and challenges for indigenous peoples' entrepreneurship.

59. Also in the Russian Federation, the Sakhalin Indigenous Minorities Development Plan has been jointly implemented by the Sakhalin Oblast Administration, the Sakhalin Energy company and the Regional Council of Authorized Representatives of Indigenous Peoples of Sakhalin region. The programme introduced a mechanism of microloans to indigenous peoples so they could develop traditional economic activities. In order to qualify, programme participants are required to submit a business plan for a project that aims to address unemployment among indigenous peoples and suggest traditional economic activities that would be pursued as part of the project. The microloans have been utilized to purchase autonomous energy facilities, information and communications technologies, vehicles, fishing nets and tackle, and certain types of electrical appliances applicable to commercial economic activity.[57]

60. In the Plurinational State of Bolivia, the State has established a "social seal" that certifies products coming from family-based sustainable agriculture. Also, measures targeted specifically at indigenous farmers have been implemented to support and modernize the production of quinoa, rice and corn, among other crops.[58]

3. Promoting indigenous peoples' businesses by ensuring equal and effective access to markets

61. Many States are recognizing that indigenous businesses are viable business models that could make a significant contribution to the economy if given the right support. Due to ongoing structural discrimination, many indigenous people are not on an equal footing with other actors in the market and without special State regulation, successful development of local indigenous economies would not be possible. Recognition of the commercial advantage in supporting indigenous business has been a catalyst for the creation of minority supplier development councils in countries including Australia, Brazil, Canada and the United States.[59] Also in Australia, the federal Government and some state governments have implemented indigenous procurement targets to increase demand for indigenous businesses in government supply chains.[60] In the United States, legislation allows federally recognized Indian tribes to operate large-scale casino gaming, with significant success for tribes located close to major cities and markets.

62. In Mexico, the National Fund for Indigenous Communities has been in place since 2015, with the aim of widening the coverage of formal financial services in indigenous communities. The Fund promotes financial inclusion as an instrument for economic development and facilitates access to improved credit conditions for indigenous peoples.[61]

II. Indigenous peoples

63. In the present section, some of the strategies that indigenous peoples are pursuing in order to play a more active role against the discrimination they face in the economic sector are outlined.

64. A number of indigenous not-for-profit economic models are focused on indigenous culture-based industries, with the primary purpose being preservation of indigenous people's cultural heritage and the safeguarding of indigenous peoples' land and resources.[62]

65. At the same time, profit-driven indigenous owned enterprises provide social returns. For example, in Canada the Millbrook Mi'kmaq First Nation, located in four reserve areas in Nova Scotia, has been very successful in pursuing economic independence and has

[57] See http://undp.com.ru/.php?id=44&pid=1.

[58] See the statement made by the Plurinational State of Bolivia at the tenth session of the Expert Mechanism.

[59] See House of Representatives, Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Open for Business: Developing Indigenous enterprises in Australia* (Canberra, 2008).

[60] Sara Hudson, presentation to the expert seminar on good practices and challenges for indigenous peoples' entrepreneurship.

[61] See the submission from Mexico.

[62] Urbis, *Enabling Prosperity*.

established a number of enterprises that create wealth and employment. Millbrook's biggest business initiative is the Trans Power Centre, a commercial development that has been highly successful in attracting a number of businesses and jobs to the area. Millbrook is using the profits of its enterprise successes to improve services in the community; for example, Can$ 4 million was provided to build a new administration building and health centre.[58] Another example is the Sakhalin Aboriginal company in the Poronaysk District in the Russian Federation. During the fishing season, the company employs up to 100 people. The company takes part in addressing social problems experienced by indigenous peoples in Sakhalin, as well as in financing and organizing an annual cultural festival.[59]

66. Joint ventures are particularly common in the extractive industry where indigenous peoples tend to lack the capital to mine their own land. With any joint venture arrangement, there needs to be a regulatory framework in place that recognizes and protects indigenous peoples' rights. Companies need to engage in due diligence and provide a fair and adequate consultation process. An example of an appropriate consultation process that recognizes the rights of indigenous peoples is the Maya Consultation Framework. A primary objective of the framework is that consultations with the Maya people are culturally appropriate and meet international normative standards, particularly the requirement of free, prior and informed consent.[60] When they can afford it, some indigenous peoples are initiating or taking over extractive industry businesses, including the Southern and Northern Ute tribes in the United States. A number of indigenous peoples reason that if extraction is going to take place anyway, it is preferable if it is an indigenous-owned business.

67. Indigenous businesses operate in a variety of sectors, including agriculture, forestry, fishing, arts, technology and tourism. The Ho-Chunk Tribe in the United States, for example, has made a deliberate effort to diversify from casino gaming into other industries ranging from business and health-care products to bottled water and ceremonial supplies. It has also developed housing so that tribal members can both live and work in their indigenous community.

68. In the past two decades, community-based approaches to tourism, such as ecotourism and cultural tourism, have become increasingly popular as a sustainable development approach that provides employment opportunities. However, for indigenous people involved in the tourism industry, the challenge is deciding what aspects of their culture to share without compromising its integrity. It is therefore important that they are provided with the opportunity to authorize any planned tourist activities on their land. With ethnocultural tourism representing one of the most promising spheres of entrepreneurship for indigenous peoples, the VII World Congress of the Finno-Ugric Peoples advised governments of regions inhabited by indigenous Finno-Ugric peoples to establish multidisciplinary educational programmes combining studies related to indigenous languages, business economics and tourism in order to encourage Finno-Ugric indigenous peoples to establish businesses that take advantage of their languages and cultures. The Congress also recommended pursuing partnerships with the World Indigenous Tourism Alliance and relying on the Lantokia Declaration on the Development of Indigenous Tourism as guidelines for developing sustainable tourism based on indigenous languages and cultures.[61]

69. The Kalevalsky District in the Republic of Karelia in the Russian Federation is a promising target area for the development of ethnocultural tourism. The Karelian authorities have taken advantage of the intangible cultural richness of the Kalevalsky District based on the Kalevala epic poem to introduce various ethnocultural activities. The indigenous peoples of the region are actively running businesses around these activities. However, according to a 2016 study conducted with support from the World Bank, many of

[58] Lumidee and Wilhelmina, *Creating Wealth and Employment in Aboriginal Communities*.

[59] Natalya Novikova, presentation to the expert seminar on good practices and challenges for indigenous peoples' entrepreneurship.

[60] Cristina Coc and Pablo Mist, presentations to the expert seminar on good practices and challenges for indigenous peoples' entrepreneurship.

[61] See http://fabis2016.finnugress.org/sites/fabis2016.finnugress.org/files/4.Economy%20and%20investment_Recommendations_eng.pdf.

[illegible] in the grey market because of a lack of education, the tough taxation policy and numerous inspections.

70. In Brazil, ethnotourism activities have only recently been regulated by the National Indian Foundation and are still a controversial issue for many indigenous peoples and communities due to their significant impact on the environment and on indigenous community life, especially in remote areas. Experiences of economic abuse by private companies or individuals involved in tourism activities have caused internal conflicts and raised communal governing concerns. In 2017, an innovative initiative of community-based tourism jointly managed by indigenous peoples and in accordance with federal legislation, supported by the State, will take place in the Rio Negro region as an assertion of indigenous peoples' self-determination.[47]

71. Regardless of the type of business indigenous peoples end up owning and operating, having ownership and meaningful control over their own business plays an important role in their well-being and collective dignity. Peer-support networks, such as indigenous chambers of commerce, also help to create a climate for indigenous business through networking and promotional and advocacy type activities. For example, in South Africa, Khoi and San leaders have formed their own chamber of commerce and industry to address their socioeconomic marginalization and to lodge land claims.[48]

72. Cooperatives are another model for business organization used successfully by indigenous peoples across the globe. For example, in Mexico, the Union of Indigenous Communities of the Isthmus Region has united coffee producers from 53 communities, including 9,000 families. They sell their coffee nationally through the fair trade market, and have started a cooperative which provides credit support. In Sidi-Moussa-Ben, Morocco, a cooperative of indigenous women produces argan oil. By owning their own business and making their own money, they are economically and socially empowered. Cooperatives not only empower indigenous peoples and facilitate their involvement in business, they also promote values of self-help, accountability, equality and solidarity.[49] Cooperatives have also assisted in securing rights, providing greater opportunities in formal labour markets, and balancing economic and environmental concerns.

73. Some indigenous peoples have established their own financial institutions, such as the Traditional Credit Union in the Northern Territory in Australia, the Caisse Populaire Kahnawake in Quebec, Canada and the Muskowekwan One community in Canada.[50] When faced with discrimination from banks, the Muskowekwan One community established its own bank, which now handles Can$ 792 million and has invested 2.9 billion in indigenous housing and indigenous businesses.[51] In Australia, the Traditional Credit Union in the Northern Territory is the only indigenous-owned and operated credit union in Australia. The idea for the Union came from a group of Aboriginal Elders who had experienced disadvantage from the lack of banking and other financial services on their land. The Traditional Credit Union was established with grant funding from the former Aboriginal and Torres Strait Islander Commission and the Aotheniland Progress Association. The first branch was opened in Milingimbi in 1995 and since then, the Union has grown to a network of 19 branches.[52]

C. Financial institutions

74. Financial institutions, from local credit unions to multilateral institutions, have a crucial role to play in combating discrimination and facilitating indigenous peoples' access

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[47] See www.semadeprorenaturing.br/pt-br/ie

[48] Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2016: Events of 2015* (London, 2016).

[49] See the submission from Cultural Survival.

[50] Lourdes and Wattanur, *Creating Wealth and Employment in Aboriginal Communities*.

[51] Grand Chief Wilton Littlechild, presentation to the expert seminar on good practices and challenges for indigenous peoples' entrepreneurship.

[52] Ubio, *Enabling Prosperity*.

to financial services. Article 41 of the Declaration calls upon intergovernmental bodies and institutions to contribute to the full realization of the Declaration through the mobilization, inter alia, of financial cooperation and technical assistance.

75. To that end, the Government of Australia has proposed a global indigenous investment fund, which it argues could help fill the gap in the investment market by providing "targeted, ethical, and culturally sensitive capital investment" to indigenous businesses in developing countries, particularly indigenous women and persons with disabilities at risk from marginalization from mainstream lenders. The suggestion is that the fund could be capitalized with "blended finance" from government, philanthropic and private funding.[68]

76. While the World Bank has no specific funding mechanism for indigenous peoples' businesses, it is currently focusing on community-driven development, which is an approach to local development that empowers community groups with control over planning and investment decisions. The World Bank has established a Dedicated Grant Mechanism for indigenous peoples.[69] None of the regional development banks for Asia, Africa, Latin America and Europe have such a financing mechanism dedicated to indigenous peoples.

77. National development banks also have a role when investing in sustainable development projects and initiatives aiming to protect the environment in or near indigenous lands and to strengthen indigenous peoples' control over their lands. In Brazil, for example, indigenous peoples, non-indigenous organizations, traditional communities and small scale farmers have established a network covering 13 municipalities for production and commercialization of forest products to protect the Xingu river basin with support from the Fundo Amazonia and the National Sustainable Development Bank.[70]

78. Another form of financial assistance provided to indigenous peoples to support their business aspirations are microfinance loans. Microfinance loans tend to be conceived for people who cannot access mainstream financial services due to low incomes and other disadvantages. They often involve funding from investors from developed countries to entrepreneurs from developing countries. Initially, microfinance loans were heralded as a way to alleviate poverty, however in recent times they have come under increasing scrutiny due to the unscrupulous practices of some lenders who are charging exorbitantly high interest rates. There are however promising practices of indigenous peoples themselves establishing microfinance schemes. For example, in Canada, Waubutek Business Development Corporation is a group of 50 organizations that are owned and managed by Aboriginal Peoples. They provide financing, loans and economic development services to First Nations and Aboriginal Peoples.[71]

IV. Challenges

A. Persistent prejudiced views of indigenous peoples' business capacity

79. Indigenous peoples continue to be regarded as high risk borrowers by conventional banks and lending institutions, in part because they may lack credit history. Generally, indigenous peoples have less intergenerational wealth, they do not always have title over their lands and are less likely to own their own home, and therefore often lack collateral for

[68] See the submission from Australia.

[69] See Ede Ijjasz-Vasquez, "Urban indigenous peoples: the new frontier" World Bank blog (6 August 2017). Available from https://blogs.worldbank.org/category/tags/indigenous-peoples.

[70] See www.socioambiental.org/pt-br/o-isa/projetos-estrategicos/sociobiodiversidade-produtiva-no-xingu.

[71] Barb Nahwegahbow, "Microfinance could be a good fit for Aboriginal people" *Windspeaker*, vol. 31, No. 8 (2013).

securing loans.[52] In the United States, research found that native business owners often begin with very small amounts of start-up capital. For example, 52 per cent of American Indian and Alaska Native respondents to the 2007 United States Census Survey of Business Owners began their business with less than $5,000.[53]

80. The lack of collateral is often exacerbated by some indigenous peoples' remote locations. Lack of communication infrastructure, limited market size and poor economies of scale, coupled with the high cost of living in remote and regional centres, severely narrows business opportunities and makes it difficult to attract qualified employees or convince lenders of business profitability.[54] There is also a shortage of financial institutions on or near indigenous lands due to their remoteness, which often imposes the existence of third or more parties to intermediate financial services, increasing the costs for indigenous peoples. Access to financial services is further limited by costly and time-consuming transportation. Women face particular challenges as they are often not allowed to hold accounts or borrow money.[55]

81. In Latin America, the persistent prejudiced views against indigenous peoples' business capacity is also evident in the manner in which social and economic programmes and policies are developed and offered to indigenous peoples without targeting specific needs and concerns. Also, compensation and mitigation measures paid to indigenous peoples due to large-scale enterprises rarely consider their business capacity in a full manner and may result in additional social disruption to and cultural impact on indigenous peoples, for example when favouring selected individuals or families to receive benefits rather than investing in sustainable communal initiatives.

82. In many African countries, indigenous peoples practise nomadic pastoralism. There is a general lack of support to that sector of the economy as it is deemed unsustainable and destructive to the environment. Governments are spending huge budgets on other sectors of agriculture in the form of incentives such as fertilizer subsidies and insurance policies while neglecting pastoralism, which has nevertheless proven to be a viable livelihood activity.

B. Lack of legal protection for rights over lands and resources

83. Indigenous peoples are often not recognized as legal owners of their lands, which may limit collateral when applying for a loan. Many lending institutions do not consider collective land ownership as equivalent to individual land titles. Private companies and financial institutions tend to simplify communal ownership and title to meet their own interests. For example, in the Amazon region there have been a number of speculative offers by private companies to buy the right to sell carbon credits from indigenous lands. A number of contracts for those purposes were considered void because they would be restricting collective use of land for traditional activities for 30 years or more to benefit a private entity.[56]

84. Furthermore, in many cases, resources on and under indigenous peoples' lands are considered to be State-owned. Globally, indigenous peoples' rights to their natural resources are restricted, particularly when it comes to subsoil resources. Even in cases where indigenous peoples do have legal title deeds to their lands, the land is often leased to mining companies with little or no consultation with indigenous people. For example, most ore production in Sweden comes from mines in Sápmi, the Sámi traditional area.[57]

[52] Miriam Jorgensen, "Access to capital and credit in Native Communities" (Tucson, Arizona, Native Nations Institute, 2017). Available from http://nni.arizona.edu/application/files/8914/6386/8578/Accessing_Capital_and_Credit_in_Native_Communities.pdf

[53] Ibid., p. 38.

[54] Ibid.

[55] See the submission from Cultural Survival.

[56] See http://g1.globo.com/natureza/noticia/2012/03/funai-considera-nulas-vendas-de-terra-indigena-para-estrangeiros.html

[57] See the preparatory report from the Sami Parliament in Sweden/Sámediggi/Sámedigge/Saemiedigkie/Sametinget for the Special Rapporteur on the rights of indigenous peoples prior to her 2015 visit to

However, there is still no agreement or legislation that formalizes the implementation of the principle of free, prior and informed consent, despite various treaty body recommendations and comments in general and to Sweden, specifically, on that subject.

85. In Norway, the lack of implementation of the right to self-governance in traditional businesses and livelihoods, such as Sámi reindeer herding, coastal fisheries, sea and river salmon fishing and spring duck hunting, is a major challenge. State management of indigenous Sámi reindeer herding under the Norwegian Reindeer Herding Act of 2007, particularly the State's right to decide on the obligatory reduction of the number of reindeer each Sámi herder can own, has recently been challenged in courts. Enforced decimation of Sámi reindeer herders' herds through State management bodies for reindeer herding must be in accordance with international human rights standards, particularly the right to property under the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights).

86. Those challenges undermine indigenous peoples' business capacities and opportunities. For example, the restrictions put on indigenous peoples' ability to protect and benefit from their land and resources constitutes one of the main obstacles to real economic development among First Nations, Métis and Inuit in Canada. Due to the loss of their land and limitations set by the various levels of government on how they can use and benefit from their land and natural resources, indigenous peoples in Canada have become increasingly dependent on welfare provided by federal or provincial governments.[9] When indigenous peoples cannot access general financial credits for improving or ensuring their crops due to lack of recognition of land rights, there is a growing dependency on welfare.[10] Such dependency is sometimes being unfairly used to justify the lack of demarcation of indigenous lands as a supposed indicator of the lack of capacity of indigenous peoples to use their traditional lands.

C. Lack of inclusive indigenous governance and leadership in business

87. A number of human rights-related challenges facing indigenous peoples' businesses are linked to their communities' structures and institutions. Having an enabling environment for businesses in indigenous communities is often contingent on social stability and legitimate governance structures. Without those internal governance arrangements it can be difficult for communities to control disparate interests and to have the necessary stability to instil investment confidence.

88. Alongside effective governance structures, indigenous communities and business leaders also need to have a clear corporate vision that is inclusive, taking into account specific types of discrimination faced by certain groups within communities. Economic development initiatives are more likely to be successful when they are indigenous-led and when leaders have a clear vision that aligns market needs and opportunities with community capacity. Indigenous communities in which successful enterprises have been developed tend to have leaders who have assessed the business possibilities available to the community in consultation with community members.

89. Therefore, initiatives to strengthen self-governing institutions, particularly those related to the use or management of land and resources and that also consider social and

Sápmi and Sweden. Available from www.sametinget.se/82639. See also *Minerals and Mines in Sápmi: the Viewpoint of the Swedish Sami Parliament*, 2014. Available from https://www.sametinget.se/87915.

[9] See *State of the World's Indigenous Peoples*.

[10] In 2016, 112,081 indigenous families accessed the Bolsa Família, whereas in 2010, the number was 66,168. See Fany Ricardo and Beto Ricardo, eds., *Povos Indígenas no Brasil: 2011/2016* (São Paulo, Instituto Socioambiental, 2017). See also www1.folha.uol.com.br/poder/2016/09/1810078-bolsa-familia-alcanca-recorde-de-indigenas-na-regiao-do-xingu.shtml.

economic development, are key to preventing internal and external conflicts when defining economic activities or indigenous business.[60]

D. Challenges facing indigenous women, youth and persons with disabilities

90. Overall, there is a lack of research into the experience of female indigenous entrepreneurship. However, what evidence there is suggests that women are more risk adverse and more likely to start a business out of necessity than men. Indigenous female entrepreneurism is often a reaction to lack of opportunity in the labour market for females (displaced opportunity).[61] Evidence from the World Bank's Regional Programme on Enterprise Development supports that view, suggesting that indigenous women's marginal social position acts as a driving force to become self-employed.[62] One of the challenges is how to articulate the value that women bring to the economy, both formally and informally. There is a strong social bias about what indigenous women are capable of and what sort of industry they should work in, with very little in the way of business mentorship available for indigenous women in many countries.[63] Indigenous women are also frequently excluded from the labour market, or are employed informally with salaries below legal norms and without social protection. Furthermore, indigenous women often bear a double burden of household work in addition to their work outside the home.

91. In African countries, indigenous women entrepreneurs have more difficulty than male entrepreneurs in obtaining credit. That has been attributed to the small size of their businesses, as well as the lack of collateral offered by entrepreneurs. Public sector banks are often focused on government expenditure, while the private banks are oligopolistic in nature and concentrate on minimizing risk.[64]

92. In Canada, a recent study was conducted in order to find ways to empower indigenous women to become entrepreneurs.[65] The Government of Canada is directly assisting women to become entrepreneurs, with 25 per cent of recipients of the Canadian Indigenous Entrepreneurship System being indigenous women.[66]

93. In Mexico, a recent study found that the financial system and the traditional banking sector are not inclusive in terms of providing credit and other financial services. The lack of financial services within reach of vulnerable sectors, including women, young persons and indigenous persons, has contributed to inequality and hampers their ability to exercise other rights, such as the rights to food, housing, work, health and education.[67]

94. Indigenous persons with disabilities are among the most disadvantaged people in the world, although there is insufficient data worldwide on that subset of the indigenous population. They often experience multiple barriers to taking part in meaningful activities, particularly in relation to employment and business activities. Young indigenous people aged 15-24 face additional challenges in establishing business enterprises due to their age and the lack of intergenerational wealth they inherit compared to other young non-

[60] See, for example, Governança e Bem Viver Indígena: Planos de Gestão Territorial e Ambiental das Terras Indígenas do Alto e Médio Rio Negro, vol. 2, p. 8. Available from https://issuu.com/instituto-socioambiental/docs/governanca_2_pgs_01a24_web.

[61] Sonya Pearce, "Indigenous women and entrepreneurship in New South Wales, Australia", PhD dissertation, University of Technology, Sydney Business School, 2015.

[62] Wim A. Naudé and J.J.D. Havenga, "An overview of African entrepreneurship and small business research", in Léo-Paul Dana and Robert B. Anderson, eds., *International Handbook of Research on Indigenous Entrepreneurship* (Cheltenham, United Kingdom, Edward Elgar Publishing Limited, 2007), pp. 28-45.

[63] Laurie Buffalo, presentation to the expert seminar on good practices and challenges for indigenous peoples' entrepreneurship.

[64] Naudé and Havenga, "An overview of African entrepreneurship and small business research".

[65] See "Creating a new narrative: empowering indigenous women through entrepreneurship". Available from www.impaktcorp.com/wp-content/uploads/2017/06/Creating-a-New-Narrative-1.pdf.

[66] See the statement made by Canada at the tenth session of the Expert Mechanism.

[67] See the submission from Mexico.

indigenous peoples.[68] As a result, reducing poverty by supporting business enterprise is particularly pertinent to young indigenous people.

[68] See "The financial economy and indigenous young people in Australia". Available from www.csi.edu.au/media/uploads/FNE_Final_Report_-_23-3-16_tGwaz9Z.pdf.

Annex

Expert Mechanism advice No. 10 on indigenous peoples' businesses and access to financial services

1. States should adopt legal and policy frameworks that recognize, promote and protect rights that allow indigenous peoples, if they so wish, to operate businesses on their lands safely and viably. Such measures should be developed with the effective participation of indigenous peoples, as provided for in the United Nations Declaration on the Rights of Indigenous Peoples.

2. When developing and implementing national action plans to achieve the ends of the Declaration, pursuant to the outcome document of the World Conference on Indigenous Peoples (General Assembly resolution 69/2), States should include measures aiming to ensure that no undue obstacles are in place for indigenous peoples to access financial services free of discrimination and pursue business activities if they wish to do so.

3. States should take measures to ensure that indigenous peoples, particularly indigenous persons with disabilities, indigenous women and indigenous youth, do not suffer from discrimination in their attempts to access financial services. Support should also be provided to business activities being undertaken by those groups.

4. Secure land tenure is essential for indigenous peoples to become engaged in business activities and access financial services. States should therefore ensure protection for indigenous peoples' rights to their lands, territories and resources and take measures to protect and promote indigenous peoples' economic activities, recognizing that those activities are constitutive elements of their rights to lands and resources. States should not turn to "privatization" regimes, but rather ensure that indigenous legal traditions regarding land, governance and business are recognized within the national legal framework.

5. States should take measures to protect indigenous peoples' rights relating to culture and traditional knowledge-related activities. That should include both facilitating indigenous peoples' involvement in economic activities linked to the arts and tourism, and protecting indigenous peoples from the misuse or misappropriation of their cultural heritage and traditional knowledge. In that regard, States, in partnership with indigenous peoples, should continue to pursue the development of international instruments that ban cultural appropriation.

6. Laws that prohibit or limit sustainable indigenous hunting, fishing, traditional farming or gathering traditions should be revised or amended in order to facilitate the development by indigenous peoples of locally based businesses in those sectors.

7. States should recognize indigenous peoples' contributions to development, and combat frequently held prejudices and stereotyped views of indigenous peoples as representing an obstacle to development. That is particularly crucial in cases where such views are used to justify land dispossession and economic marginalization. Furthermore, State policies and actions should recognize the important role that indigenous economies and business models can play in promoting sustainable development practices.

8. States should consider targeted measures to encourage and facilitate indigenous peoples' involvement in business and their access to financial services. Those measures can include tax incentives, programmes to facilitate access to credit, programmes to promote financial literacy, and subsidies or cash transfers to promote traditional economic activities. However, States should not misuse that financial support in order to put pressure on or interfere with the decision-making processes of indigenous communities.

9. States should provide safety net measures for indigenous businesses, including protection against hostile competition.

10. States should ensure that statistical data on employment and traditional livelihoods of indigenous peoples are available at all levels. Those data can guide the design and implementation of support measures and programmes for indigenous entrepreneurship.

11. The use of indigenous languages in business activities should be enabled, and indigenous peoples should have access to information on financial services in their own languages.

12. In cases where indigenous peoples themselves, in exercising their self-determination, decide to exploit resources on their lands, the principle of free, prior and informed consent should still be respected in order to ensure that all sectors of the communities involved participate effectively.

13. Indigenous peoples should consider establishing peer support networks to facilitate exchange of experiences and networking relating to their participation in business and their access to financial services.

14. Financial institutions, including intergovernmental banks, should devise financial products and services that are accessible to indigenous peoples and considerate of their perspectives in business.

15. Indigenous peoples, States and financial institutions should work together to support viable and sustainable economies in indigenous communities, so that indigenous persons have the opportunity and option to work, live and raise families on their own lands and territories, while also participating in national and regional markets to the extent that they wish to do so.

16. States should work with indigenous peoples and others to ensure that business and financial activities, including legislative measures pertaining to indigenous economic development, are undertaken with attention to indigenous peoples' self-determination, institution-building and cultural legitimacy, as well as best practices in relationships with communities and partners.